

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DANIEL A. MUNOZ**  
Claimant

VS.

**MONFORT, INC.**  
Respondent  
Self-Insured

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Docket No. 206,628

**ORDER**

Respondent appeals from a preliminary hearing Order for Medical Treatment by Administrative Law Judge Jon L. Frobish on February 20, 1996.

**ISSUES**

Respondent seeks review alleging that the Administrative Law Judge exceeded his jurisdiction in finding notice was given and ordering medical treatment. Respondent further alleges that the Administrative Law Judge exceeded his jurisdiction in refusing to allow respondent the opportunity to present rebuttal evidence.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record, the Appeals Board finds for purposes of the preliminary hearing as follows:

Pursuant to K.S.A. 44-534(a), a disputed issue of whether notice is timely given is considered jurisdictional and subject to review by the Appeals Board.

Claimant has not established timely notice of accident. In his Form E-1 Application for Hearing, claimant alleges a series of accidents beginning June 5, 1995 and continuing each and every day thereafter through July 7, 1995. This time period encompasses the beginning and ending dates of claimant's employment with respondent. According to his preliminary hearing testimony, claimant began experiencing pain in his left hand, wrist or arm "about a month and a half" after he began working. He developed a knot on the top of his left wrist or hand. The record is unclear as to the precise location of his symptoms and the knot, as he pointed to the area but did not describe the area to which he was pointing.

Claimant admits that he did not report to his supervisor or any one else at Monfort that he was having pain in his wrist, but alleges that he went to the company infirmary and showed what he described as a very small ball on his wrist to the nurse. The claimant did not know the date of this visit to the infirmary but described it as being approximately three

weeks after he began experiencing the pain. Claimant did not return to the infirmary at any time after his initial visit and subsequently quit his employment on July 7, 1995 after having been absent from work for a period of approximately five days for a reason unrelated to his alleged injury. He has not received any other type of medical treatment for his alleged injury. He has worked for two subsequent employers and described his condition as having gotten worse since leaving his employment with respondent.

Respondent provided the testimony of Roxanna Garcia, workers compensation coordinator for respondent. Before holding her current position, Ms. Garcia worked out on the floor as a nurse. She testified that she had reviewed the company medical file on the claimant and that there was no record of his having been seen at the infirmary for any condition since his initial employment screening was performed.

Claimant described the nurse to which he allegedly reported his injury as a tall, thin, white male with a beard, mustache and glasses. Ms. Garcia testified that there were no nurses fitting that description employed at Monfort during June or July of 1995. Respondent employed only three male nurses, two of which could have been on duty at the time claimant described. None of the three had a beard or mustache. Only one wore glasses but he was not tall and thin.

Although claimant contends that he quit his employment with the respondent because of his alleged injury, which he felt would keep him from qualifying for his position, claimant admits that he never advised his supervisor of the condition. Claimant was employed with respondent for approximately five weeks and missed approximately five days of work during the final week, this being the number of days he reportedly spent in jail before quitting. He does not know the date that he went to the infirmary but at various times described this as being about a month and a half after he started work or three to four weeks after the ball in his wrist area developed which he noticed either six weeks after he started working or three to four weeks after he started working, with the pain starting about three or four weeks thereafter.

K.S.A. 44-520 provides in part:

"[P]roceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice necessary."

The respondent denies being given timely notice of accident. The record is silent as to when respondent argues notice was first received, however, we note that the claimant's Form E-1 Application for Hearing was received by the Kansas Division of Workers Compensation on November 20, 1995. It is the claimant's burden to prove notice. See K.S.A. 44-501(a). The only notice claimant points to in the record is the alleged visit with the company nurse. The Appeals Board does not find the record to be persuasive that any such visit occurred. As such, the Appeals Board finds that claimant has failed to meet his burden of proving timely notice pursuant to K.S.A. 44-520.

The respondent also raises an issue concerning the denial of its request that the preliminary hearing record be left open in order to afford respondent opportunities to put on rebuttal testimony in the form of depositions from the three male nurses that worked for the respondent during the relevant time. The Appeals Board need not review that issue, given its findings above.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that

the Order for Medical Treatment of Administrative Law Judge Jon L. Frobish dated February 20, 1996 should be, and the same is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Alisa A. Nickel, Dodge City, Kansas  
Mark McFarland, Garden City, Kansas  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director